yet power to enjoin a libel has been, inferentially at least, denied the courts by our constitutions and it is doubtful whether even the presence of irreparable injury to property, constitutes such an exception as will permit their exercise of this prerogative.

GOVERNMENTAL REGULATION OF CHARGES.

No question causes more diversity of opinion among the justices of the Supreme Court of the United States than that which involves the limitation of governmental power over individuals and corporations engaged in occupations of a public nature.

That the state has power to regulate such occupations has been settled by a long line of decisions beginning with *Munn v. Illinois,* 94 U. S. 113, though not without a constant dissent. But to what extent this power may be exercised has never been definitely decided.

In the recent case of *Cotting v. Godard, 22* Sup. Ct. Rep. 30, Justice Brewer, in an able opinion, has reviewed the cases on this subject and attempted to deduce therefrom rules by the application of which the limitations upon this governmental power may be more clearly ascertained.

It must first be observed that a distinction is made between those who are engaged in performing a strictly public service and those who have devoted their property to a use in which the public have an interest, although not engaged in a work of a confessedly public character.

In the former class of cases, Justice Brewer states that "while the power to regulate has been sustained, negatively, the court has held that the legislature may not prescribe rates, which if enforced would amount to a confiscation of property. But, it has not held affirmatively that the legislature may enforce rates which stop only this side of confiscation and leave the property in the hands and under the care of the owners without any remuneration for its use." Nevertheless, it is a fair inference from the remarks of the Justice, that he considers the States might well go to this extent in the exercise of their power, without violating the 14th Amendment to the Constitution of the United States.

In justification of this seemingly severe doctrine, it is pointed out that one thus engaging in a public service undertakes to perform a function of the state and therefore voluntarily accepts all the conditions of public service which attach to like service performed by the

State itself. He is aware that the State in the performance of its work is not actuated by motives of private gain, but may, on the other hand, if the greater public good demands it, render the services at a loss or at any rate without pecuniary profit.

It is therefore argued that he who voluntarily undertakes to act for the State must submit to a like determination as to the paramount interests of the public. Then, again, one so engaged is granted certain governmental powers, such as the power of eminent domain, by which he is enabled to acquire property at its real market value. All these circumstances tend to lessen the severity of this doctrine.

But, however much these reasons might justify the application of this doctrine to the former class of cases, the Justice maintains that a different rule must be applied in the latter class, of which the case at bar is an example.

This case was brought to test the constitutionality of a statute passed by the Kansas legislature, regulating the price per head to be charged by stock yard companies. It is to be distinguished from the class of cases just discussed in that the stock yard company had not undertaken to do the work of the State, nor to use its property in the discharge of a purely public service, nor had it acquired any of the governmental powers of the State. It was engaged in an occupation for merely private gain and had placed its property, willingly or unwillingly, in such a position that the public had become interested in its use.

The case is therefore analogous to *Munn v. Illinois,* and tested by the rule there laid down it was conceded that the State has the power to make *reasonable* regulation of the charges for services rendered by the stock yards company.

What shall be the test of reasonableness in those charges is absolutely undisclosed by decisions prior to the case at bar. The Circuit Court held that the chief inquiry should be, "What is the aggregate profits of the stock-yards?" supplemented by the further inquiry as to whether the company could make a reasonable profit by charging the statutory rates.

Justice Brewer considers that the inquiry of the lower court proceeded on too narrow limits, and lays down the rule that the State's regulation of charges is not to be measured by the volume of business but by the question whether any particular charge to an individual dealing with the corporation is, considering the service rendered, an unreasonable exaction. "The question is not how

much he makes out of his business, but whether in each particular transaction the charge is an unreasonable exaction for the services rendered."

In this conclusion he is supported by the decisions of the English courts. *Canada Southern R. Co. v. International Bridge Co.,* L. R. 8 App. Cas. 723.

But in using this case of *Cotting v. Godard* as an authority, the fact must not be overlooked that, while Justice Brewer devoted the greater part of his opinion to the consideration of the questions above mentioned and deemed them of great importance, his associates declined to express their opinion upon these points but based their concurrence upon the ground that the statute applied to one company and not to other companies engaged in like business and was therefore unconstitutional.

What the decision would have been had the question of the limitation of governmental power been squarely presented to the court is open to speculation.